

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah LePage	Team: Team # 3	CCRB Case #: 200504660	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/21/2005 5:30 AM	Location of Incident: § 87(2)(b)	Precinct: 73	18 Mo. SOL 10/21/2006	EO SOL 10/21/2006	
Date/Time CV Reported Fri, 04/29/2005 2:15 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 04/29/2005 2:15 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Patrick Cherry	08307	926676	NARCBBN
2. LT Salvator Bertocci	00000	892783	NARCBBN
3. Officers			
4. DT3 Carlos Naranjo	03890	916309	NARCBBN
5. CPT Timothy Bugge	00000	893880	PSA 8

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Alan Gaspard	07660	904006	NARCBBN
2. POM Christop Castle	05317	928041	NARCBBN
3. SGT Roy Bocina	00579	917315	NARCBBN
4. DT3 Virgil Cumberbatch	05766	897278	NARCBBN
5. POM Angelo Cuzzo	14638	918580	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.CPT Timothy Bugge	Abuse: Captain Timothy Bugge supervised the entry and search of § 87(2)(b)	§ 87(2)(b)
B. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	§ 87(2)(b)
C. Officers	Force: Officers pointed their guns at § 87(2)(b)	§ 87(2)(b)
D.DT3 Carlos Naranjo	Off. Language: Detective Carlos Naranjo made remarks to § 87(2)(b) based upon her sexual orientation.	§ 87(2)(b)
E.POM Patrick Cherry	Off. Language: Officer Patrick Cherry made remarks to § 87(2)(b) based upon her sexual orientation.	§ 87(2)(b)
F.POM Patrick Cherry	Abuse: Officer Patrick Cherry threatened to have § 87(2)(b) evicted.	§ 87(2)(b)
G.LT Salvator Bertocci	Abuse: Lieutenant Salvator Bertocci threatened to arrest § 87(2)(b)	§ 87(2)(b)
H.LT Salvator Bertocci	Abuse: Lieutenant Salvator Bertocci seized § 87(2)(b)'s property.	§ 87(2)(b)
I. Officers	Abuse: Officers refused to provide their names and shield numbers to § 87(2)(b)	§ 87(2)(b)

### Synopsis

On April 21, 2005 between 5:00 AM and 6:00 AM, § 87(2)(b) was sleeping on a futon in her living room, when officers from Narcotics Borough Brooklyn North entered her apartment, damaging her door, with their guns pointed at her (**allegations A, B and C**). The officers entered the apartment and handcuffed § 87(2)(b). They searched the apartment and showed her a search warrant. § 87(2)(b) said that Detective Naranjo and Officer Cherry made comments to her based on her sexual orientation (**allegations D and E**). § 87(2)(b) said that Officer Patrick Cherry also told her that if she was lying about having drugs that he would make her lose her apartment (**allegation F**). The officers recovered a bottle of prescription pills that were in an unlabeled pill bottle and confiscated them and § 87(2)(b) said that Lieutenant Bertocci told her that he could arrest her for a felony, but that he was not going to (**allegations G and H**). As the officers were leaving, § 87(2)(b) asked them all for their names and badge numbers but only Officer Cherry and Lieutenant Bertocci provided their names and the other officers did not respond (**allegation I**).

§ 87(2)(g)

[REDACTED]

### Summary of Complaint

On April 29, 2005, § 87(2)(b) a § 87(2)(b)-old black female, filed a complaint with the CCRB in person (enc. 10). During her interview, § 87(2)(b) provided a written statement, which was consistent with her CCRB statement, except where noted (enc. 11). She also provided a copy of the search warrant and of a New York City Housing Authority (NYCHA) work order that indicated that a call was made on April 21, 2005 at 8:21 AM to have her door repaired. According to the work order, the job to repair the door began at 10:30 AM and was completed at 11:50 AM (enc. 12 A-C, D-F, J). On August 22, 2005, § 87(2)(b) was presented with photographs of the officers involved in the incident according to police documents (enc. 13). Following is a summary of § 87(2)(b)'s April 29, 2005 interview at the CCRB.

§ 87(2)(e), § 87(2)(f)

[REDACTED]

On Thursday April 21, 2005, between 5:00 AM and 6:00 AM, § 87(2)(b) was sleeping alone on a futon in the living room of her apartment, which is located at § 87(2)(b) in Brooklyn. Six officers wearing ski jackets (PO#1 male, black, 6'0", bald head, 200 lbs., 25-30 years old, PO#2 male, white, spiked hair, PO#3 male, light skin, heavy set, moustache, short spiky hair, other descriptions unknown) entered her apartment. The officers tore the lock off of her door and they made a crack in the door. The officers had their guns drawn and pointed at her and they told § 87(2)(b) not to move and to put her hands up. It was dark so § 87(2)(b) could not see exactly who had their guns drawn, but she was sure that PO#1 had his gun out. They flipped her lights on and then some officers went back into her room and another officer, who § 87(2)(b) could not describe, came towards her and handcuffed her while she was sitting on her futon.

§ 87(2)(b) stated that she felt extremely threatened because she “is a lesbian female and did not deal with men as it was.” PO#1 and PO#2 were in the back of her apartment. PO#3 stayed near § 87(2)(b) and asked her what was on her videotape, which was a pornographic video. PO#4 (male, Hispanic) made a comment about § 87(2)(b)’s photographs, stating that there were men in the photographs that were actually women. PO#4 also made comments and jokes about § 87(2)(b)’s sexuality, but she could not recall exactly what the officer said. Officer Cherry asked § 87(2)(b) questions about things that were written on her calendar. He also asked her how long she lived at her residence and whether anyone lived with her. § 87(2)(b) told Officer Cherry that no one lived with her, but that people visited her. Officer Cherry also asked § 87(2)(b) who § 87(2)(b) was and § 87(2)(b) replied that he was her brother. § 87(2)(b) was on Rikers Island because of some “baby mama issues.” Officer Cherry also asked § 87(2)(b) if § 87(2)(b) used to live with her and she said that he used to visit and he used her apartment as a mailing address. Officer Cherry said, “Well, I’m gonna fix this situation like I fixed that one.” § 87(2)(b) did not know what he meant by saying that but she thought that he got it from her calendar. PO#1 and PO#3 were also there. Officer Cherry told § 87(2)(b) that if he finds out that she is lying that he will make her lose her apartment. Officer Cherry took photographs of § 87(2)(b) while she was handcuffed without asking her § 87(2)(e).

§ 87(2)(b) did not know anything about drugs being in her apartment. Officer Cherry also made a comment about how clean § 87(2)(b)’s house was. He said, “Your kind of people don’t live like this.” The officers also opened a safe that had her important documents with her social security number. Officer Cherry asked § 87(2)(b) what was in the safe and she told him to take a knife and open it, which he did.

The officers searched the apartment and found nothing. § 87(2)(b) could not see where the officers were searching because she could not see into her bedroom, but she saw them go into her bedroom. Before they were leaving, § 87(2)(b) received the search warrant. Lieutenant Bertocci walked out of § 87(2)(b)’s room with one of her prescription pill bottles for Tylenol with Codeine, which she had because she recently had a hysterectomy. § 87(2)(b) did not want her name to be on the bottle because if someone takes it and sells it to someone else, her name is on the bottle and she will be blamed. Lieutenant Bertocci told § 87(2)(b) “I’m gonna take this [pill bottle]. We could charge you with a felony, but we’re not going to.” § 87(2)(b) stated during her CCRB interview that the officers took all of § 87(2)(b)’s prescriptions, even the pill bottles with the labels on them, including her Welbutrin and her Iron pills that were inside of § 87(2)(b)’s dresser drawer in her bedroom. However, in her written statement and during her August 22, 2005 photographic viewing, she said that Lieutenant Bertocci only took one pill bottle, which was not labeled. Then the officers removed the handcuffs from § 87(2)(b) and left § 87(2)(b)’s apartment.

When the officers were leaving, § 87(2)(b) asked them all for their badge numbers and Officer Cherry shook his head as if to tell the officers not to tell her. § 87(2)(b) said during her CCRB interview that he wrote his name and shield number down on a piece of paper. However, in her written statement, § 87(2)(b) said that Officer Cherry did not write his name and shield number down. Lieutenant Bertocci wrote his name down for her. § 87(2)(b) was certain that all of the officers heard her ask them for their names and badge numbers.

After the officers left the apartment, § 87(2)(b) noticed that they moved a few things on top of her dresser, but she was not sure whether they went into her drawers other than the drawer with her medication. § 87(2)(b) said that a man who lives in apt. § 87(2)(b) (identified by the CCRB as § 87(2)(b)) saw what happened.

On April 26, 2005, § 87(2)(b) called to speak to Officer Cherry’s supervisor and Officer Cherry told § 87(2)(b) that he could arrest her for having her name off of the medication bottle.

### **Photographic Viewing**

On August 22, 2005, single service photographs of the officers assigned to Brooklyn North Narcotics on the date of the incident were presented to § 87(2)(b) one at a time. § 87(2)(b) recognized the photograph of Officer Castle. She recognized Officer Cherry by name and said that he was “the rudest one.” § 87(2)(b) said that when the officers were leaving, Sergeant Bocina apologized and he was the nicest officer. § 87(2)(b) also said that Lieutenant Bertocci was nice to her, but he took § 87(2)(b)’s

medication from her because it was in an unlabeled bottle. He also said, "I can arrest you, but I'm not going to. You know this is a felony." § 87(2)(b) did not remember seeing Captain Bugge, Officer Cuozzo or Detective Cumberbatch. § 87(2)(b) definitively identified Detective Naranjo as the officer that questioned § 87(2)(b) about vibrators and made gay jokes. She specified during her photographic viewing that Detective Naranjo pointed to a tape in § 87(2)(b)'s VCR and said, "I hope I don't see you on this tape" and that he picked up § 87(2)(b)'s vibrator and looked at it. § 87(2)(b) said that Officer Castle and Detective Gaspard did not make any comments, but they were there when Detective Naranjo was making jokes. Detective Naranjo was the only officer that made rude comments (enc. 13).

## **Results of Investigation**

### **Civilian Statements**

On June 29, 2005, § 87(2)(b) who lived in apartment § 87(2)(b) was contacted by the CCRB (enc. 25). § 87(2)(b) said that on April 21, 2005, he was on his way out of his apartment at around 5:30 AM, when he saw five or six officers going towards § 87(2)(b)'s apartment. He asked them not to bother her because she was very quiet and was never even home. One of the officers told him to "shut up" and he did. Then the officers knocked § 87(2)(b)'s door down with some kind of machine. § 87(2)(b) could not tell if the door was damaged. They yelled, "Police! Wake up! Get up!" § 87(2)(b) sat at the end of the hallway for about 30 minutes until the officers went downstairs. He could not hear or see what was going on inside of the apartment. None of this other neighbors saw anything.

### **Police Documents**

*Search Warrant* (enc. 12 D-F). The search warrant related to this incident indicated that Officer Cherry proved that there was reasonable cause for believing that "certain property, to wit:

- a. Cocaine, vials, caps, glassine envelopes, small ziplock-style bags, and other evidence of the possession and distribution of cocaine, including but not limited to paraphernalia used to process and distribute drugs, including but not limited to dilutants and scales, counter-surveillance equipment, and records and documents reflecting drug transactions.
- b. Currency and other evidence of proceeds from drug trafficking, including but not limited to financial records in any format, tending to demonstrate cash transactions or financial transfers derived from the possession of cash currency, money orders, bank receipts, stocks, bonds, bills and receipts for goods and services, documents relating to real estate holdings, and any title or registration to motor vehicles.
- c. Evidence of ownership and use of the target premises, or the use of property located therein by any person, including but not limited to keys, telephone bills, utility bills, bank statements, leases, deeds or rent receipts related to the target premises or other real property, mail addressed to or from the target premises, identification bearing the name or photograph of any person, telephone books, address books, date books, calendars, personal papers, and videotapes and photographs of persons,

Which is evidence of the possession of narcotics and the means of committing a narcotics crime, may be found in apartment § 87(2)(b) on the six floor, in premises of § 87(2)(b) and on the person(s) of J.D. Glasses, J.D. Lady, and J.D. Young Man, if present therein, and that there are grounds for entry without giving notice of authority and purpose." The warrant was signed on § 87(2)(b).

*Search Warrant Pre-Execution Plan and Pre-Warrant Data Entry* (enc. 21-22). According to the search warrant pre-execution plan, Captain Bugge was the overall supervisor and Lieutenant Bertocci and Sergeant Bocina were the search supervisors. Officer Cherry was the arresting officer and was responsible for bunker security. Officer Castle was also responsible for bunker security, Detective Cumberbatch was responsible for the hydro ram, Detective Gaspard and Detective Naranjo were assigned to handcuff and search any individuals inside the location and Officer Cuozzo was responsible for animal control. Officer

Sanez and Officer Licciardi were assigned to front security and Officer Bannister and Officer Galan were assigned to rear security. § 87(2)(e)

*Search Warrant Post-Execution Plan* (enc. 23). The search warrant post-execution plan indicated that the warrant resulted in one voided arrest and that other contraband was recovered. “Upon entry, premise was secured and all persons therein. A search of the premise revealed a prescription bottle containing a quantity of a controlled substance. Said prescription bottle was missing the appropriate label as required by law. Said prescription bottle and contents were vouchered.”

### Identification of Officers Interviewed

§ 87(2)(b) identified Officer Cherry and Lieutenant Bertocci because they provided their names to her during the incident and they were thus interviewed. § 87(2)(b) identified Sergeant Bocina, Officer Castle, Detective Naranjo and Detective Gaspard as having been present so they were also interviewed. Officer Cuozzo was also interviewed because he was listed on the Narcotics Borough Brooklyn North tactical plan as having entered the apartment. § 87(2)(g)

### Officer Statements

#### Officer Patrick Cherry, Lieutenant Salvator Bertocci and Sergeant Roy Bocina

On July 19, 2005, Officer Cherry was interviewed at the CCRB and Lieutenant Bertocci was interviewed on September 28, 2005 (enc. 14, 17). Sergeant Bocina was interviewed on September 1, 2005 (enc. 19).

On April 21, 2005, Officer Cherry and Lieutenant Bertocci worked from 4:33 AM to 1:00 PM. They were assigned to execute a search warrant with Sergeant Bocina, Officer Castle, Detective Cumberbatch, Detective Gaspard and Officer Cuozzo. Lieutenant Bertocci was Officer Cherry’s immediate supervisor and Captain Bugge was the overall supervisor. They were wearing NYPD authorized raid jackets. Officer Cherry read the following entries from his DAR. “From 0433 to 0540 present for duty Brooklyn North Narcotics. From 0540 to 0550, en route to § 87(2)(b) regarding a search warrant. From 0550 to 0715, at above. 0715 to 0720, en route to 73<sup>rd</sup> Precinct.” Lieutenant Bertocci’s DAR stated, “From 0610 to 0620, went to vicinity of § 87(2)(b) with Captain Bugge. 0620 to 0715, at above with above, regarding search warrant for apartment 6E. 0715 to 0720, en route to 73 Precinct.” Sergeant Bocina read the following memo book entries. “0610 to 0620 en route to § 87(2)(b) At 0620, hit the door of § 87(2)(b) and conducted a search until 0820. From 0820 to 0830, en route to 73<sup>rd</sup> Precinct. At 0830, voided arrest of § 87(2)(b) and vouchered pills that were found at the location.”

Officer Cherry, Lieutenant Bertocci, Sergeant Bocina and the rest of their team assembled at § 87(2)(b) at 6:00 AM, apartment § 87(2)(b). They arrived at the § 87(2)(b) floor and were tactically staged in the hallway. The door was forced open with a hydram, which is an automatic tool that is placed in the doorjamb and separates the doorjamb from the door. The door was damaged at the doorjamb and the locking mechanism. Officer Cuozzo, Detective Cumberbatch, Detective Naranjo, Detective Gaspard, Officer Castle, Officer Cherry and Sergeant Bocina entered the apartment initially. They entered in the following order: Officer Castle, Officer Cherry, Sergeant Bocina, Detective Gaspard, Detective Naranjo, Detective Cumberbatch, Officer Cuozzo, Lieutenant Bertocci and Captain Bugge.

The door opened in the left-hand direction and they made entry to the right of the apartment where § 87(2)(b) was sleeping on a bed. Officer Cherry’s gun was drawn and it was pointed at § 87(2)(b) and he directed her not to move. The officers agreed that they were trained to enter a location with their guns pointed when conducting a search warrant. Officer Castle also had his firearm out and pointed. He had a ballistic shield and Officer Cherry was behind him. Sergeant Bocina had his gun drawn, but no other officers had their guns drawn. § 87(2)(b) was handcuffed and the living room and kitchen was cleared, meaning that the officers checked for any people or animals that might be a threat to their safety. The door was closed and Officer Castle made progress down the hallway and cleared the bathroom and the bedroom

at the end of the hallway. § 87(2)(b) was alone in the apartment and she was handcuffed to ensure her safety, which is procedure during search warrant executions. The officers conducted a search of the location, looking anywhere that drugs could be found in accordance with the search warrant. The subject of the search was not found, however, they did recover a prescription pill bottle with a controlled substance in it, with no label, which is in violation of public health law. Officer Cherry stated that he found the pill bottle in the hallway closet, just next to the bathroom. He did not send it for field test results, but he vouchered it as investigatory evidence. Lieutenant Bertocci did not know which officer found the bottle of pills, but he said that the officers confiscated it. The officers agreed that they did not tell § 87(2)(b) that she could be charged with a felony. They told her that if the prescription medication that they seized was hers, it was in violation of public health law and if it was not hers, it is in violation of a penal law, but that was not what they were there for and they were not going to lock her up for it. Lieutenant Bertocci said that he might have told § 87(2)(b) that he could arrest her for the prescription bottle, but that they were not going to. Officer Cherry said that she would have only been charged with a misdemeanor (CPCS 3) anyway.

Officer Cherry spoke to § 87(2)(b). He explained to § 87(2)(b) why the officers were there and § 87(2)(b) responded that they were not going to find anything. Officer Cherry said that the other officers might have told her to calm down and that she was not going to get hurt, but he did not recall any other specific conversation between § 87(2)(b) and the officers. Officer Cherry told § 87(2)(b) that if nothing's there, she had nothing to worry about. He also told her to calm down a few times because she became excited. Officer Cherry said that there was one photograph, in which the person appeared to be a male. The officers were trying to determine whether the male in the photograph was the subject of their investigation. Officer Cherry asked if the individual in the photograph was her brother and she said, "No, that's my girlfriend." Officer Cherry said that § 87(2)(b)'s brother was not the subject of their investigation. Lieutenant Bertocci stated that § 87(2)(b) was "very proud of her sexual orientation" and he and Sergeant Bocina said that she made several comments to the officers related to the fact that she was gay. Although, Lieutenant Bertocci and Sergeant Bocina could not remember specifically what she was saying.

§ 87(2)(b) told Officer Cherry that she would never sell drugs there because she would not want to lose her apartment. Officer Cherry said that he told § 87(2)(b) that if a person does sell drugs in a Housing building, a case of legal action could be made where a person could lose their apartment. Officer Cherry said that he spoke about losing the apartment in general and did not specifically speak about her situation. Lieutenant Bertocci said that he might have told § 87(2)(b) that as a public housing tenant, she could lose her apartment if drugs were found inside of her residence, which was true.

Officer Cherry remembered that there was a lock box in the bedroom that was already open, which Lieutenant Bertocci and Sergeant Bocina did not recall. Officer Cherry did not hear any other officers ask § 87(2)(b) for a key and he did not ask for a key. Officer Cherry looked in the box and nothing was there. The officers did not make any comments to § 87(2)(b) about her sexuality or anything in her apartment. The officers did not make any comments regarding the cleanliness of her apartment that she might have taken offense to.

§ 87(2)(b) asked Officer Cherry for his name and badge number. He responded by writing his name and Lieutenant Bertocci's name on a piece of paper and handed it to her after her handcuffs were unlocked. § 87(2)(b) asked other officers for their names and badge numbers and Officer Cherry told her that the execution of the search warrant was his responsibility along with the lieutenant, whose names she had. The officers did not respond, but Officer Cherry stated that he did not give them a chance to respond to her. Sergeant Bocina said that § 87(2)(b) did not specifically ask him for his name and badge number.

Lieutenant Bertocci said that he and Captain Bugge stayed in the apartment throughout the entire execution of the search warrant, but Officer Cherry said that Captain Bugge only stayed inside of the apartment long enough to make sure that no one was injured and that there were no unusual circumstances and then he left. Lieutenant Bertocci explained that not all members of the field team are required to search the location, so some members of the field team would have been bringing down the equipment, putting it back in the cars and securing the cars out front while other officers conducted the search. Specifically, Lieutenant Bertocci

did not remember telling Detective Naranjo to leave, but once the apartment was secured, most of the officers left. The officers notified Housing that there was damage to the door and Officer Sanez was posted in front of the door until Housing was able to fix the lock.

Sergeant Bocina said that since they did not find any crack, which was what they were looking for, the officers voided § 87(2)(b)'s arrest. Her handcuffs were taken off and the officers wrote her information down. She never left the apartment, but because she was handcuffed and was not free to leave at that time, Sergeant Bocina felt that it was prudent to void her arrest to show that she was stopped, handcuffed and was not free to leave.

§ 87(2)(e)

Officer Christopher Castle, Officer Anthony Cuozzo, Detective Carlos Naranjo and Detective Alan Gaspard

On September 1, 2005, Officer Castle and Officer Cuozzo and Detective Naranjo were interviewed at the CCRB (enc. 16, 15 and 18). Detective Gaspard was interviewed on January 11, 2006 (enc. 20). Officer Castle read the following statements from his DAR. "From 0540 to 0550, en route to § 87(2)(b) in rental auto 6254 with Sergeant Bocina and Officer Cherry. 0550 to 0715, at above location." Officer Cuozzo, Detective Gaspard and Detective Naranjo did not have their DARs at their interviews. § 87(2)(g)

Officer Castle said that he entered the apartment first and that he had his gun drawn in accordance with police procedure, but that he did not recall pointing his gun at § 87(2)(b). Detective Naranjo said that he was either the fourth or fifth officer to enter the apartment. Detective Naranjo said that he held his gun at his side and when he entered the apartment and saw that everything ahead of him was secured, he holstered it and locked it in place. Detective Naranjo said that he secured the kitchen area and remained there until the entire apartment was secured. Detective Naranjo did not search the kitchen. Captain Bugge and Lieutenant approached Detective Naranjo and told him and some other officers that they could leave. Detective Naranjo walked past § 87(2)(b) and out of the apartment and he did not return. Detective Naranjo was inside of the apartment for about ten minutes. Officer Castle and Officer Cuozzo did not recall looking inside of a lock box.

Detective Naranjo stated that he did not make any derogatory comments to § 87(2)(b) based on her sexuality and he did not hear any other officers make any comments. Likewise, Officer Castle, Officer Cuozzo and Detective Gaspard did not hear any officers make any comments to § 87(2)(b) based on her sexuality or about any sexual objects in the apartment. They also did not hear any officers threaten § 87(2)(b) in any way.

### **Subject Officer History**

Officer Cherry has one substantiated complaint on his CCRB history (200305443) for physical force, stop/question and frisk/search, for which the NYPD found him not guilty (enc. 6 A-B). Lieutenant Bertocci was cited for failure to prepare a stop, question and frisk log in CCRB 200008394 (enc. 7). Captain Bugge and Detective Naranjo had no substantiated complaints on their CCRB histories (enc. 5, 8).

### **Conclusions and Recommendations**

#### **Determination of Facts**

It is clear that Narcotics Borough Brooklyn North officers obtained a search warrant for § 87(2)(b) which they executed. It is also undisputed that the officers entered the apartment,

some with their guns drawn and pointed at § 87(2)(b) that they handcuffed her, searched her apartment and seized an unlabeled pill bottle. It is clear that the officers told § 87(2)(b) that she could be arrested for having the unlabeled pill bottle and that she could lose her apartment if she sold drugs from the apartment and that only Officer Cherry and Lieutenant Bertocci provided their names to § 87(2)(b) ■

§ 87(2)(g)

### Civilian Credibility

§ 87(2)(g)

### Officer Credibility

§ 87(2)(g)

### Identification of Subject Officers

§ 87(2)(b)

§ 87(2)(b) definitively identified Detective Naranjo and Officer Cherry as having made comments to her based on her sexual orientation. She also definitively identified Officer Cherry having threatened to make her lose her apartment. § 87(2)(b) identified Lieutenant Bertocci as the officer that threatened to arrest her and that seized her prescription pill bottle. § 87(2)(b) did not identify the officers that refused to provide their names and shields in photographs,

§ 87(2)(g)

### Allegations Pleaded

**Allegation A: Captain Timothy Bugge supervised the entry and search of § 87(2)(b)**

**Allegation B: Officers damaged § 87(2)(b)'s property.**

**Allegation C: Officers pointed their guns at § 87(2)(b)**

It is clear from officer statements and documents that Captain Bugge was the overall supervisor of the warrant execution at § 87(2)(b)'s apartment. It is also clear that in order to gain entry to the apartment, the officers damaged § 87(2)(b)'s door and upon entry at least three officers had their guns drawn. A valid no-knock search warrant was obtained and it was necessary to use a device to gain entry to the apartment, which resulted in damage to the door. According to Interim Order 41 related to Search Warrant Execution, "The commanding officer leading the warrant execution will ensure that any door damaged during the course of a warrant execution is secured/repared prior to the release of the premises from police custody" (enc. 1). § 87(2)(b) provided a work order from NYCHA, which showed that the door was



repaired by 11:50 AM on April 21, 2005, indicating that the door was prepared as required by the NYPD Patrol Guide. Additionally, the NYPD Student's Guide indicates that police force is a form of seizure and that officers must only use the reasonable and necessary amount of force needed "to seize, or bring under police control, the person it was used against" (enc. 2 A-D). § 87(2)(g)

Additionally, the NYPD Student's Guide also states that officers may draw their firearms "under circumstances in which officers reasonably believe that they may soon have to use deadly force to defend themselves or others against lethal assaults." Examples included, "confrontations with known violent offenders or persons alleged to have committed crimes punishable by lengthy sentences (e.g., as in serving warrants on armed robbers or drug traffickers)" (enc. 2). § 87(2)(g)

**Allegation D: Detective Carlos Naranjo made comments to § 87(2)(b) based on her sexual orientation.**

**Allegation E: Officer Patrick Cherry made comments to § 87(2)(b) based on her sexual orientation.**

§ 87(2)(b) stated that Detective Naranjo made jokes to her about being gay and made comments about a video and other objects in her apartment. § 87(2)(b) also said that Officer Cherry said, "You're people don't live like this," implying that her apartment should not have been so clean because she is gay. The officers denied making any such comments to § 87(2)(b) § 87(2)(g)

**Allegation F: Officer Patrick Cherry threatened to have § 87(2)(b) evicted.**

§ 87(2)(b) said that Officer Cherry also told her that if he found out that she was lying about not having drugs that he would make her lose her apartment. She also said that Officer Cherry told her over the phone that he could arrest her for not having her name on the pill bottle that the officers recovered. Officer Cherry admitted that he told § 87(2)(b) that if she had drugs that a case could be made against her and she could eventually lose her apartment, since she is a public housing tenant. As outlined in the NYCHA handbook for residents, according to the Bawdy House Law, residents and their families can be evicted for drug activity on or off NYCHA grounds (enc. 2 E-H). § 87(2)(g)

**Allegation G: Lieutenant Bertocci seized § 87(2)(b)'s property.**

**Allegation H: Lieutenant Bertocci threatened to arrest § 87(2)(b)**

§ 87(2)(b) stated that Lieutenant Bertocci confiscated medicine that was prescribed to her for having had surgery and that he told her that he could arrest her for a felony, but that he was not going to. § 87(2)(b) admitted that she had taken the label off of the prescription bottle. Lieutenant Bertocci admitted that an officer took the bottle because it was against public health law to possess a controlled substance in an unlabeled bottle. He also admitted that he might have told her that they could arrest her for the unlabeled pill bottle, but that they were not going to because that was not why they were there. He said that he never told § 87(2)(b) that she could be arrested for a felony. According to Public Health Law 3345, "it shall be unlawful for an ultimate user of controlled substances to possess such substance outside of the original container in which it was dispensed" (enc. 3 A-B). § 87(2)(g)

**Allegation I: Officers refused to provide their names and shield numbers to § 87(2)(b)**

§ 87(2)(b) said that she asked Officer Cherry for his name and shield number and that he provided it, along with Lieutenant Bertocci's name. § 87(2)(b) said that she asked all of the officers for their names and that they did not respond. Officer Cherry admitted that he did not give the other officers a chance to provide their names and that he provided his and Lieutenant Bertocci's names. Officer Cherry took responsibility for the other officers' refusal to provide their names and shield numbers based on the fact that he was the arresting officer and Lieutenant Bertocci was the search supervisor. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: